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An unending variety of topics

Saturday, September 30, 2006

More on arbitrary detainment and *habeas corpus* suspension

More good comments on the monstrous legislation from Jack Balkin, Jack Balkin, and Glenn Greenwald. The best comments are from a bunch of law professors, who attach the text of the Senate bill. I am no Democrat, but I couldn't agree more with Greenwald that our most urgent and important tasks here in the U.S. this fall are to end one-party rule of the federal government and to punish politicians who have voted away our freedoms. Toward that end here is the list of Representatives who voted for and against arbitrary detainment. See my prior post to determine how your Senators voted.

Per Balkin's comments, and the comments of many who supported this legislation, an individual right of action in court -- i.e. *habeas corpus* -- has for many hundreds of years been the first line of defense against illegal imprisonment. Often it the *only* way for a prisoner to make his case heard. Without a right of action in court, any and all of the Bill of Rights, the Geneva Convention, and so on are just theoretical. That the a member of the executive branch would be doing something illegal by detaining innocents indefinitely, committing torture, and so on is moot unless it leads to impeachment or a court hearing. The possibility of impeachment, extremely unlikely even if the Democrats win in November, and no matter how many illegal acts the executive branch adds to the probable thousands it has already recently committed, is no substitute for the right of a person to defend his or her own rights in court. Furthermore, even if the President were impeached this would be not nearly enough to disincentivize the failure of much of the rest of the executive branch, as the Constitution commands them, to "take care that the laws be faithfully executed." The fate of a short-term denizen of the White House is not that big a deal to a career bureaucrat who is doing the immediate law breaking. Faithful law enforcement depends crucially on the ability of the targets of that enforcement to defend themselves in court.

Posted by Nick Szabo at 1:38 AM

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Nick Szabo

"A premier thinker about history, law and economics, and the lessons they have for security." -- Adam Shostack, Emergent Chaos

"Szabo comes out with these essays that leave me in awe." -- Brian Dunbar

"Reading material that is eclectic, challenging and endlessly fascinating." -- Sean McGrath, Propylon

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